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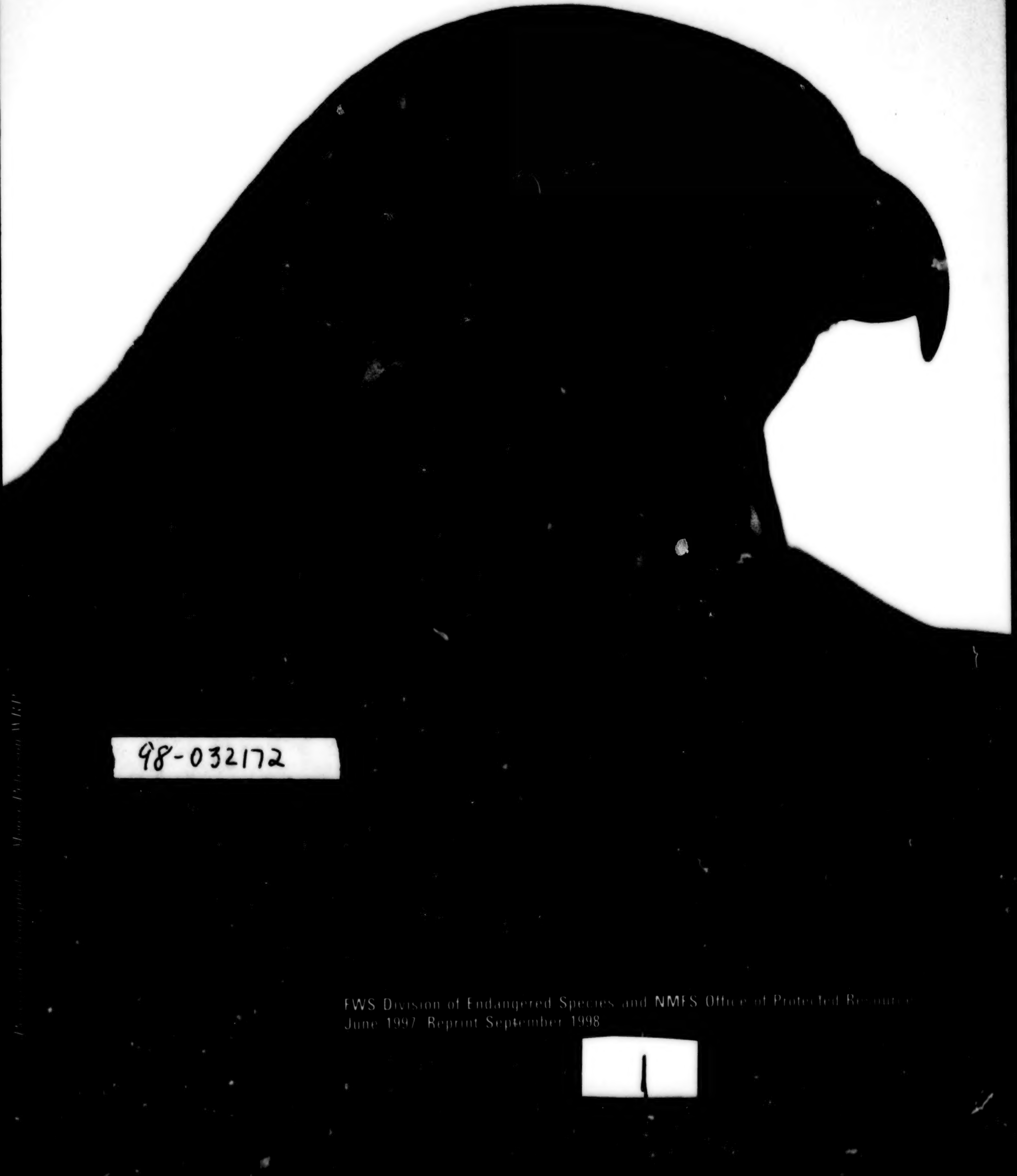
U.S. Fish & Wildlife Service

Making the ESA Work Better

Implementing the 10 Point Plan . . . and Beyond



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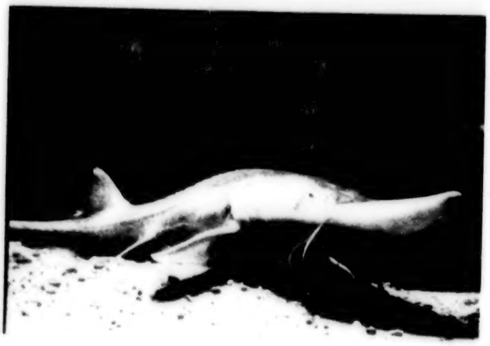

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Top, left to right:

kemp's ridley turtle

bald eagle

red-cockaded woodpecker

pallid sturgeon

brown pelicans

whooping cranes

Florida panther

manatees

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cover photo: USFWS

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Introduction

Protecting endangered species is an enormous challenge with profound social, ecological and economic implications. By enacting the Endangered Species Act of 1973, Congress demonstrated its understanding that our nation's wildlife resources are finite, and that maintaining biodiversity for future generations depends on the collective behaviors and perceptions of the American people toward wildlife habitat in the present.

Over the past several years, the Clinton Administration has taken major steps toward making the Endangered Species Act (ESA) work better by tapping into the flexibility contained in the current law. In June of 1994, Secretary of the Interior Bruce Babbitt and D. James Baker, Under Secretary of Commerce for Oceans and Atmosphere, announced a series of administrative policy reforms and legislative ideas designed to improve the ESA's effectiveness while making it easier for Americans to work with and understand. These changes, collectively called the "10 Point Plan," are making the ESA more effective in recovering listed species while enhancing its flexibility for businesses and private landowners. Primary objectives of the Administration in this effort have been as follows:

- increase the effectiveness of the United States in conserving endangered and threatened species;
- increase flexibility and provide regulatory certainty when working with non-Federal landowners;
- increase the role of the Federal family in conserving resources so as to provide more flexibility to non-Federal landowners;
- increase partnerships with the States;
- enhance the roles of various stakeholders (State and local governments, other Federal agencies, Tribes, and private landowners) in implementing the ESA; and
- prevent further endangerment of declining species by encouraging proactive conservation initiatives designed to avoid the need for species listings.

photo: USFWS

This report illustrates the significant progress made by the Administration, the Departments of the Interior and Commerce, the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS), toward achieving these goals. As a result of these efforts, the science underlying ESA decisions is more comprehensive than ever; cooperation among Federal agencies, state and local officials, non-governmental groups, and private citizens is stronger; more stakeholders are getting involved in all aspects of the ESA implementation process on a regular basis; the likelihood of economic disruption has been reduced; and species are being protected earlier and more efficiently than ever before.

As a further commitment to making the ESA work better for people and wildlife, the Administration has gone beyond implementation of the 10 Point Plan by developing still more innovative ways to work cooperatively with non-Federal landowners and other stakeholders. This report provides numerous examples of these and other initiatives that highlight such cooperative efforts.

Ensuring the Use of Sound Science

Peer Review

In July 1994, a policy entitled Policy for Peer Review in Endangered Species Act Activities was issued, directing the Fish and Wildlife Service and National Marine Fisheries Service to ensure that all actions taken under the ESA are based on the best scientific information available. The policy directs that the expert opinions of three appropriate and independent specialists be solicited regarding pertinent scientific or commercial data on species under consideration for listing and that the opinions of all independent peer reviewers received on the species be included in the final decision document. This policy also specifies that draft recovery plans be submitted for independent peer review to obtain all available scientific and commercial information, and to review pertinent scientific data relating to selection or implementation of specialized tasks in draft recovery plans.

- Final listing determinations and recovery plan approved since inception of this policy have been peer reviewed, often resulting in changes to the listing packages or recovery plans. For example, on the draft final rule to list two insects from the Santa Cruz Mountains of California as endangered, six out of seven peer reviewers responded with comments, providing new scientific information that significantly strengthened the proposal. Nearly every recovery plan is improved in some way based on information provided during the peer review process. In addition, listing proposals and Notices of Availability of draft recovery plans are published in the Federal Register to solicit comments from the public, including experts in species' biology and habitats.

- Following a legal challenge to the listing of the California gnatcatcher as threatened, the FWS sought outside expertise by contracting with the National Biological Service (now the Biological Resources Division of the U.S. Geological Survey) to analyze the petitioner's raw data. The FWS also solicited public comment on the issue. The additional information provided by both the Biological Resources Division analysis and th- public comments formed the basis fo the FWS' final listing determinatio in March of 1995.

- Disputes have arisen among fishery co-managers over such issues as the use of artificial propagation to assist in restoring naturally reproducing populations of salmon, and transportation of juvenile salmon around hydropower facilities. NMFS and the Northwest Power Planning Council made significant progress in resolving these disputes in 1996 by forming an independent Scientific Advisory Panel to summarize information that will assist managers in resolving basic disputes over science applied in fishery management decisions in the Pacific Northwest, and to advise the disputing scientists regarding the most appropriate approaches.

- NMFS 1996 proposed rules for listing of coho and steelhead were peer reviewed, as was the Proposed Recovery Plan for Snake River Salmon, and the status review for Atlantic salmon.

- NMFS and FWS are working together with the Columbia Basin tribes and the states to develop production management plans for supplementation and captive broodstock programs in an effort to help recover listed Snake River salmon. These plans are recommended in the proposed Snake River Salmon Recovery Plan. A procedure called the Sampsel Process has been set up in which the co-managers (Federal, state, tribal) can discuss specific controversial hatchery issues (straying, production cap) that have generated intense debate between the Services and co-managers.

Petition Management Guidelines

Section 4(b)(3) of the ESA allows any interested individual to petition the FWS or NMFS to list, delist, or reclassify species, or to revise a listed species' critical habitat. The Petition Managemen Guidance provides specific guidance for the Services on petition identification, data/information submission standards, lead Region responsibilities, time frames for submitting 90-day and 12-month findings, petition tracking, preparation o administrative findings and notices, and petitioner notification. The Services mad available a draft of the Petition Management Guidance through a notice published in the Federal Register on December 21, 1994 (59 FR 65781). Comments received in response to that notice were considered in formulating th final guidance document, which was issued in July 1996.

- The new guidelines increase the peer review standards for making petition findings under section 4 of the ESA by providing clear standards of scientific credibility that petitions to list undescribed species must meet and requiring that only petitions supported by scientifically valid information will be accepted for review. Under the guidelines, the Services will not find a petitioned action "warranted" unless they possess sufficient evidence of status and threats to support a formal proposal to carry out the action.

- The Services will involve States and Tribal governments early in the review of petitions affecting their jurisdiction over native species in an effort to ensure that petitions are examined thoroughly in the light of all available scientific evidence.

- Ultimately, the Services will ensure that the petition process serves its function by calling appropriate attention to situations affecting the welfare of species that would justify rulemaking under section 4 of the ESA.

Intercross Policy

The Services have developed a joint draft policy to address the issue of intercross progeny and how to treat them under the ESA. Intercross progeny are individuals which have one parent that is a listed entity and the other which is of a closely related subspecies but not protected under the ESA. This joint draft policy clarifies that it has never been the policy of either of the Services to list hybrids but that intercross individuals--that is, entities that are a cross between a listed subspecies and a non-listed subspecies of the same species--may be considered for protection if these individuals are critical to the recovery of the listed subspecies.

Conversely, such progeny may be detrimental to the recovery of the listed enity. In such cases, the offspring would not be afforded any protection under the ESA. Intercross individuals may be produced naturally or through a controlled propagation program. In cases where intercrossing is recommended in an approved recovery plan and supported be an appropriate genetics management plan, the intercross progeny would receive the protections of the ESA. All controlled propagation activities that involve intercross for recovery of a listed species must have the prior approval of the FWS Director or NMFS's Administrator.

- For example, the persistence of the Florida panther population appears dependent upon successful restoration of genetic health and viability. A genetic management program was implemented with the release of eight female Texas cougars into South Florida in spring and summer 1995. This program should augment the depressed Florida panther genetic pool through the introduction of material from this formerly contiguous subspecies without significant alteration in the basic genetic makeup of the panther or swamping the existing gene pool which may be adapted to local environmental conditions. Five litters of kittens were born as of February 1996. One goal of the program is to radio-instrument all offspring so that progress of the genetic restoration may be closely monitored.
- There are also situations in which the presence of intercross progeny could be an obstacle to recovery. For example, the genetic swamping of the Amistad gambusia, a fish, by a closely related species resulted in the loss of the listed species. Under such circumstances, no protection would be offered to the intercross offspring; in fact, the intercross progeny could be removed to prevent further obstructions to the recovery of the species. Final listing rules generally do not identify or address genetic introgression as a threat or recovery measure, but such a threat would be discussed in an approved recovery plan.

Endorsements of ESA Science

Two separate reports were released during 1995 that analyzed the effectiveness of the ESA from a scientific perspective. While both reports offered suggestions on how to improve the use of science in implementing the protective measures described in the ESA, they also clearly endorsed the scientific principles contained in the current law:

- On May 24, 1995, a National Research Council committee released a report requested by Congress entitled "Science and the Endangered Species Act," which concluded that there has been a good match between sound science and the ESA since its passage in 1973. The report concluded that (1) the ESA's emphasis on species, subspecies, and distinct vertebrate populations is soundly justified by current scientific knowledge and (2) the ESA's emphasis on protecting habitat reflects current scientific understanding of the crucial relationship between species and their habitats. The committee also endorsed the regionally based, negotiated approaches to the development of habitat conservation plans provided for by the 1982 amendments to the ESA and currently being implemented by the FWS in areas across the country.
- A report released in 1995 by the Ecological Society of America entitled "Strengthening the Use of Science in Achieving the Goals of the Endangered Species Act" further endorsed the science used in implementing the ESA. The Society's ad hoc Committee on Endangered Species, made up of nine distinguished ecologists, concluded in their report that the 1973 ESA is a powerful and sensible way to protect biological diversity, and contains the procedures and mechanisms to achieve this goal. They went on to suggest that an ecosystem-based approach to habitat conservation would be the most efficient way to protect species; the Services are currently implementing such an approach in parts of the country like southern California, the Pacific Northwest and the Florida Everglades region.

Listing Priority Guidance

The Service developed listing priority guidance to ensure that, in emerging from the 1995/96 listing moratorium and budget recision, the limited resources available for listing would be used to provide ESA protection to those species in greatest need in the most efficient manner possible. In the May 8, 1998, Federal Register, the Service announced a three-tiered listing priority guidance for Fiscal Years 1998 and 1999. The revised guidance allows the Service to proceed with a number of downlisting or delisting actions for animals and plants that have recovered or are recovering. The Service had been unable to undertake any delisting or downlisting actions for over two years due to the backlog of proposed species awaiting final rules. The top listing priority will continue to be the completion of emergency listings for species facing a significant and imminent risk to their well-being. The second priority includes: processing final decisions on proposed additions to the list; processing new proposals to add species to the lists; processing petitions to add, reclassify, or remove species from the lists; and proposing the delisting or downlisting of a limited number of species that no longer warrant listing as endangered or threatened. Third priority will be processing petitions for critical habitat designations and preparing proposed and final critical habitat designations.

Focusing on Candidate Conservation

Identifying Candidate Species Through Partnerships

To ensure that sound science and the best available scientific information support all FWS decisions regarding candidate species, the agency has been working effectively with its partners (other Federal and State agencies and the private sector) to collaborate on identifying candidates for listing. For example, the FWS developed a Cooperative Agreement with The Nature Conservancy (TNC) to facilitate the exchange and distribution of data. The emphasis on identifying candidate species is important so that conservation efforts can be launched early enough to remove the need to list.

- The FWS in 1995 clarified the definition of "candidate species" as species for which the FWS has on file sufficient information on biological vulnerability and threats to propose them for listing (the former category-1 candidate definition).

- The FWS periodically conducts a comprehensive review of its candidates for listing and most recently published a candidate notice of review on September 19, 1997.

- Species on the NMFS List of Candidate Species are those for which concerns remain regarding their status, but for which insufficient information is available to propose them for listing.

Candidate Conservation Agreements

Landowners in both the public and private sectors have been aggressively encouraged to help conserve candidate species by entering into a voluntary conservation agreement with the FWS and NMFS. A voluntary candidate conservation agreement between the landowner and the FWS and NMFS identifies what actions will be taken to conserve candidate species. Successful conservation agreements can eliminate the need for listing altogether. Examples of actions landowners can take include habitat protection, management, or restoration actions such as fencing, control of public access, stream rehabilitation, controlled burns, or reintroduction of species into suitable habitat.

- In several instances, candidate conservation agreements have resulted in the withdrawal of proposals to list species. For example, the State of Utah and the FWS signed the Virgin Spinedace Conservation Agreement in 1995. The goal of the agreement is to ensure that this fish species occupies at least 80% of its historical habitat and will be achieved by implementing the following management actions: reestablishing and maintaining required instream flows; enhancing and maintaining physical habitat; selectively controlling non-native fishes; maintaining genetic viability; and monitoring populations and habitat parameters. These measures have been so successful that the proposal to list the Virgin spinedace was withdrawn on February 6, 1996.

photo: USFWS

- The Arizona willow was thought be restricted to high elevation streams in Apache County, Arizona, but status surveys conducted in southern Utah in 1994 found much larger populations. The FWS, the U.S. Forest Service, the Utah Division of Wildlife Resources, and the Arizona Game and Fish Department developed the Arizona Willow Conservation Agreement and Strategy to protect the species on Federal lands. Concurrently, the White Mountain Apache Tribe worked with the FWS to develop a management plan to address conservation issues on the reservation. These agreements proved successful in reducing damage caused by cattle and elk, off-road vehicle use and timber harvest in willow habitat. As a result of these cooperative efforts, the proposal to list the Arizona willow was withdrawn on April 28, 1995.

- The copperbelly water snake was proposed for listing, but the States of IN, KY, and IL developed management plans that removed the need for listing in the southern portion of its range. This species was listed in MI, IN, and OH (in the northern portion of its range).

- A Candidate Conservation Agreements Policy is being developed that will provide non-Federal resource owners (e.g., State and local agencies, private landowners, Tribal governments, and businesses) who voluntarily agree to manage their lands to benefit candidate or proposed species with assurances that they will not incur additional regulatory obligations in excess of those they agree to at the time they enter into the Agreement if the candidate or proposed species is subsequently listed.

Addressing Private Landowner Concerns

Habitat Conservation Planning

The section 10 Habitat Conservation Planning (HCP) process is an opportunity to provide species protection and habitat conservation within the context of non-Federal development and land use activities. This process reconciles biological and economic factors. For landowners and local governments, it provides long-term assurances that their activities will be in compliance with the requirements of the ESA. Biologically, it provides the Services with a tool to offset the incidental take of listed, proposed, candidate, and other species by reconciling species conservation with economic land use or development. For both sides, the HCP process promotes negotiated solutions to endangered species conflicts and provides an alternative to litigation.

- **Addressing Private Landowner Concerns**—The HCP program under section 10(a)(1)(B) of the ESA has grown rapidly in response to recent administrative reforms. In the first 10 years of the program (1983-1992), only 14 incidental take permits were issued. Only six years later, by the end of May 1998, 241 incidental take permits had been issued.

- These permits cover hundreds of species and approximately 6.2 million acres. Approximately 4.2 million acres are covered by approved HCPs in the President's Federal Forest Plan area. The total acreage identified in these HCPs covers lands that will be preserved as well as lands that will be actively managed or developed.

- In an effort to provide regulatory "one-stop shopping," FWS and NMFS are undertaking joint HCP negotiation efforts. For example, FWS and NMFS have jointly signed four HCPs with non-Federal landowners.

photo: USFWS

Streamlined HCP Process

To cope with the growing section 10 HCP workload and anticipated future increases in the program, the Services streamlined the HCP process to the maximum extent practicable and allowed by law. To accomplish this, a comprehensive HCP Handbook was developed and finalized which introduced numerous improvements to the HCP program. The Handbook:

- Establishes joint policies and procedures for FWS and NMFS Provides clear guidance on permit processing procedures

- Establishes target processing time lines for permit review and approval

- Clarifies regulatory standards regarding the relationship between HCPs and recovery and mitigation standards

- Requires integration of section 7 early in the HCP development process and clarifies the role of section 7 in the HCP process

- Increases coordination requirements between the Field Office and Regional Office during HCP negotiation and permit processing phases

- Streamlines NEPA compliance by better integrating the NEPA process into development of HCPs.

Decreased Permit Processing Time

In response to concerns about the length of time required to complete the HCP process, the Services have established new target permit processing time lines for HCPs based on the level of NEPA analysis required for the HCP. Although not mandated by law or regulation, these targets are adopted as policy by both Services.

A "low-effect" HCP category has been established in the Handbook to further speed the HCP permit process for private landowners whose projects involve: (1) minor or negligible effects on federally listed, proposed, or candidate species and their habitats covered under the HCP; and (2) minor or negligible effects on other environmental values or resources. "Low-effect" HCPs are categorically excluded from NEPA requirements and do not require Implementation Agreements or Solicitor review of the permit application.

Integrated HCP/NEPA Analysis

The guidance in the HCP Handbook was revised to encourage the Services to combine the HCP and NEPA analysis into a single document because existing regulations specifically permit NEPA documents to be combined with other agency documents to reduce duplication and paperwork. This technique should not be viewed as preparation of two separate documents that are then published under one cover, but an integrated analysis that meets the requirements of both NEPA and ESA.

"No Surprises" Assurances

The HCP Handbook also describes the assurances provided to HCP applicants under the No Surprises policy. After soliciting public review and comments on the No Surprises policy, the Services published it as a final rule in the February 23, 1998, Federal Register. This rule provides certainty for private landowners in the ESA's section 10(a)(1)(B) process by making certain assurances. Essentially, private landowners are assured that if "unforeseen circumstances" arise, the Services will not require the commitment of additional land, water, or financial compensation, or additional restrictions on the use of land, water, or other natural resources, beyond the level otherwise agreed to in the HCP (for the species covered by the HCP) without the consent of the permittee. The government will honor these assurances as long as a permittee is implementing the terms and conditions of the HCP, permit, and other associated documents in good faith. In effect, this regulation states that the government will honor its commitment as long as the HCP permittees honor theirs. The development of the No Surprises rule has generated a very positive response on the part of non-Federal landowners and has contributed significantly to the increased interest in HCPs.

Adaptive Management

Adaptive management is a tool that is incorporated into some HCPs that allows for changes to the mitigation strategies that are necessary to reach the goals and biological objectives of the HCP where significant biological data gaps exist. This approach increases the likelihood of success for the mitigation program and ensures the survival and recovery of the species covered by the HCP. Under an adaptive management approach, the mitigation strategy of an HCP would be monitored and analyzed to determine if it is producing the required results. If the desired results were not being achieved, previously agreed upon adjustments in the mitigation strategy could be employed. Incorporating adaptive management clauses into HCPs often is a useful strategy to help ensure the long-term conservation of the covered species. Adaptive management clauses allow changes to occur in the HCP's mitigation strategy as data gaps are filled by newly available information.

"No Take" MOUs

The FWS has developed agreements or "No Take" Memoranda of Understanding (MOU) to encourage landowners to develop integrated management plans that allow them to realize the economic benefits of their land while conserving listed species and avoiding the incidental take of such species. "No Take" MOUs identify land use or management activities which would not result in a take, allowing landowners to know what habitat conditions can be maintained on their property while avoiding a "taking" situation.

- One example of a No Take MOU is the agreement signed by the Department of the Interior and the Georgia-Pacific Corporation in 1993 to provide for preservation of red-cockaded woodpecker habitat in four southeastern states (Arkansas, Louisiana, South Carolina, and Mississippi). Under the agreement, Georgia-Pacific will conserve the woodpecker's habitat on approximately four million acres of the company's forest land while conducting forest management activities, including timber harvesting. The company also agreed to actively implement conservation measures wherever woodpecker populations are found on company lands. Under the MOU, the FWS certified that certain company practices were not likely to violate section 9 take prohibitions for the woodpecker, thereby providing the land managing company regulatory certainty.

Explaining and Clarifying "Take" Restrictions in Listing Rules

In order to best define for the public how listing of a species could affect public and private activities, the Services now describe in final listing rules (1) those activities that would constitute a section 9 incidental take violation and (2) those activities that would not constitute such a violation. By specifying the activities, the Services provide the public with advance notice of the effects of the listing on their activities. In addition to specifying likely "take" and "no take" activities, the final rule provides a contact for further information on questions regarding whether specific activities not addressed in the rule are likely to constitute a violation of the "take" prohibitions. The Services' intent is to avoid situations where the public is uninformed about how a listing will impact their lives. The public comment process that follows publication of a proposed rule allows for further refinement of the list of prohibited and allowable activities before the listing becomes effective.

photo: USFWS

4(d) Rules

Section 4(d) of the ESA grants the Secretary broad regulatory discretion for fashioning protective rules for species listed as threatened. These rules can modify or waive some of the restrictions and prohibitions which might normally apply to threatened species, thereby providing additional flexibility in managing their recovery while responding to local conditions.

- A 4(d) rule for the northern spotted owl in the Pacific Northwest has been proposed to provide private landowners with certainty regarding the use of their land, a reduction of adverse social and economic impacts that may result from owl management, and positive incentives for voluntary owl conservation activities. The rule is designed to be complementary to the President's Federal Forest Plan and supplemental to ongoing habitat conservation planning efforts in the Pacific Northwest.

- The coastal California gnatcatcher special rule is another example of the Fish and Wildlife Service's innovative implementation of existing ESA provisions. This special rule was promulgated to facilitate and support implementation of the State of California's Natural Communities Conservation Act of 1991, the goal of which is development of ecosystem-based management programs that will preserve the coastal sage scrub ecosystem and its unique assemblage of species, while maximizing development opportunities through local government participation. The rule further supported State planning efforts by providing that activities undertaken in compliance with the NCCP process would be deemed in compliance of the ESA. To avoid disrupting ongoing activities while the NCCP program was being developed, the FWS included provisions in the rule to guide development activities in the interim period. These provisions provided needed flexibility to local governments and private landowners within the planning area.

Working with Other Federal Programs

Streamlined Section 7 Consultation

The Services are completing a joint handbook and joint policies governing the interagency consultation process. Streamlining and expediting the section 7 process, making the process more open to applicants as well as the action agency, and encouraging agencies to work with both Services early in the project planning stage or on a programmatic basis have been the key elements in reforming the section 7 process.

- In response to efforts to expedite specific forest health projects and timber sales in the Pacific Northwest, the Services have taken major steps to streamline the section 7 consultation process, resulting in shorter consultation times for both informal and formal consultations for Federal agencies. The 135 days allowed by the ESA for completion of formal consultations and biological opinions has been reduced, on average, by two-thirds. The key to such efficiencies has been enhanced cooperation and collaboration with the affected land management agencies and the opportunity for early involvement in land use planning activities.

- The Services have accelerated their work with other Federal agencies on programmatic consultations, which may involve 100 or more individual Federal actions in one consultation. For example, the FWS consulted with the Office of Surface Mining, Reclamation, and Enforcement (OSM) to address OSM's surface coal mining regulatory program. Through this consultation, the FWS and OSM developed an efficient and effective way for OSM's programs to comply with ESA provisions. Simply stated, the consultation provides for the development of necessary measures to minimize impacts from coal mining operations on listed and proposed species at the beginning of the mining permitting process. This approach allows for the development and incorporation of protective measures as mining permit conditions early in the permitting process without having to trigger formal section 7 consultation procedures for every permit.

- The Services anticipate that the demand for programmatic consultations will continue to increase in the future. Programmatic consultations can save the Services and the action agencies time and resources by identifying where concern is warranted while allowing other broad sets of actions to proceed. The Services will continue efforts to improve consultation efficiency by encouraging the use of programmatic consultations for major classes of widespread actions, and by encouraging early informal consultation on individual Federal actions.

- NMFS tries to maximize efficiency by engaging in informal discussions with the action agencies wherever possible. Where it is impossible to avoid impacts to listed species by early project planning and formal consultation cannot be avoided, NMFS works with the applicant and the agency to define exactly what information is needed to complete a Biological Assessment. This helps to ensure that the assessment will be complete when received by the agency, thereby avoiding further delays.

- NMFS has developed internal guidance for streamlining programmatic Section 7 consultations, and has worked with agencies to reduce the number of separate consultations by combining permits or projects by watershed or project type. An example of the watershed approach is the handling of a large number of reviews and applications in a river system or watershed in one cumulative consultation. An example of the project-type approach is the cumulative consultation in the NMFS Northeast region on all beach nourishment projects in Corps of Engineers (COE) New York District waters.

Avoiding the Need for Listing

In an effort to reduce the number of listings which could otherwise have been avoided by early intervention, NMFS and FWS have made a concerted effort to increase pre-listing coordination with other Federal agencies. The thrust of this effort is to work with the applicant or Federal project manager as soon as possible to discuss ESA concerns and to map out the best design for a project that will avoid unacceptable impact to declining resources, as well as the need for last-minute, costly design changes.

- Atlantic Salmon restoration actions have resulted in changes in the management of salmon in the United States and internationally. Originally designed to aid species restoration and to avoid listing, these actions are a good example of a cooperative effort between NMFS, FWS, and other state and Federal agencies to "front-load" species conservation in planning and consultation processes. As a result of these actions, a proposal to give the Atlantic salmon ESA protection was deemed unnecessary, and the proposal was withdrawn.

Memoranda of Understanding/Agreement

To further cooperation and partnership within the Federal family in conserving candidate species and implementing species recovery activities, the Services and/or the Department of the Interior (DOI) have entered into the following Memoranda of Understanding (MOUs) or Memoranda of Agreement (MOAs) since January of 1994:

- MOU among Forest Service (FS) , Bureau of Land Management (BLM), National Park Service (NPS), NMFS and the FWS on the conservation of species that are of concern to these agencies (January 25, 1994);

- MOU among BLM, National Biological Service (now the Biological Resources Division of USGS), Office of Surface Mining, NPS, U.S. Department of Agriculture's Agricultural Research Service (ARS), Soil Conservation Service (SCS), Department of Defense (DOD), U.S. Forest Service and the FWS on Federal native plant conservation (May 25, 1994);

- MOU among USDA, DOD, Department of Army (DOA), Department of Transportation (DOT), Environmental Protection Agency (EPA), DOI and NMFS on the implementation of the ESA (September 28, 1994);

- MOU among FS, Alaska Department of Fish and Game, and the FWS on promoting the conservation of species that are of concern to these agencies (December 20, 1994);

- MOU among NPS, BLM, FS, NMFS, the FWS, and American Zoo and Aquarium Association on the conservation of native fishes, enhancement of public awareness, and the improvement of communications between zoos, aquaria, and Federal agencies (December 6, 1995);

- MOA among the U.S. Department of the Army (for the Army Corps of Engineers), the Department of Energy (for BPA), the Department of Commerce (for the National Marine Fisheries Service) and the Department of the Interior (for the Bureau of Reclamation and the FWS), recognizing those agencies' significant and continuing responsibilities toward the Indian Tribes of the Columbia River Basin and their fish and wildlife resources, arising under the United States' trust obligations, treaties, statutes, and executive orders. (September, 1996); and

- MOA among FWS, NMFS, Bureau of Indian Affairs (BIA), and the Klamath, Yurok, Hoopa, and Karuk Tribes of the Klamath River Basin which guides the implementation of the government-to-government relationship between those tribes and the United States (through the Bureau of Reclamation), with respect to the development of the long term operations plan for Reclamation's Klamath Project.

photo: US Forest Service

Partners for Fish and Wildlife Program

One of many successful public/private conservation efforts, the FWS Partners for Fish and Wildlife program offers landowners new opportunities to get involved in species conservation. Landowner participation in the program is voluntary, and FWS funds are matched dollar for dollar by private landowners and other conservation partners (conservation groups, State and local governments, business and industry). Although not specifically designed to benefit only threatened or endangered species, approximately 10 percent of completed projects have benefited listed threatened and endangered species or other species at risk. One goal of the program is to preclude the need for listing.

- Under this program, more than 360,000 acres of wetland habitat, 282,000 acres of native grass and prairie habitat, and 1,100 miles of riparian and in-stream habitat have been restored since 1987.

- The Partners for Wildlife program has become so popular and successful that at least 2,000 landowners are on a waiting list to participate.

Coastal Program

The Nation's coasts provide habitat for nearly half of the listed threatened and endangered species. By improving habitat conditions for trust species in stressed and fragile coastal ecosystems, the FWS Coastal Program helps maintain coastal biodiversity and aids in the recovery of listed species. In the past four years, program activities in eleven of the highest priority coastal ecosystems restored and protected wetland and upland habitat through agreements, conservation easements, and acquisition in concert with partners in and out of government. Our partnerships have:

- reopened 755 miles of coastal streams for anadromous fish passage;

- restored 26,400 acres of coastal wetlands; and

- restored 11,900 acres of coastal upland habitat;

- protected over 7 miles of shoreline habitat.

National Wildlife Refuge Program

The National Wildlife Refuge System is a unique collection of vital animal and plant habitats managed by the FWS. Most major ecosystems in the United States and its territories are represented within the 514 refuges in the system, which total approximately 93 million acres. One of the system's most important roles is endangered species conservation.

- More than 200 proposed or listed animal species and many proposed or listed plant species occur on National Wildlife Refuges. Fifty-eight refuges were established specifically for endangered species.
- Refuges provide an opportunity for intensive habitat management, if necessary, and for experimentation with recovery methods under controlled conditions. For example: certain refuges manipulate water regimes to enhance habitat for species like the Everglade snail kite or the western prairie fringed orchid. On other refuges, beach areas are secured and restored to protect nesting sea turtles. Prescribed fire on the Okeefenokee NWR in Georgia is helping to restore the long-leaf pine habitat vital to conservation of the gopher tortoise, eastern indigo snake, and the red-cockaded woodpecker.

National Marine Sanctuary Program

The mission of the National Marine Sanctuary Program, administered by the Sanctuaries and Reserves Division of the National Oceanic and Atmospheric Administration, is to identify, designate and manage areas of the marine environment of special national significance due to their conservation, recreational, ecological, historical, research, educational, or aesthetic qualities.

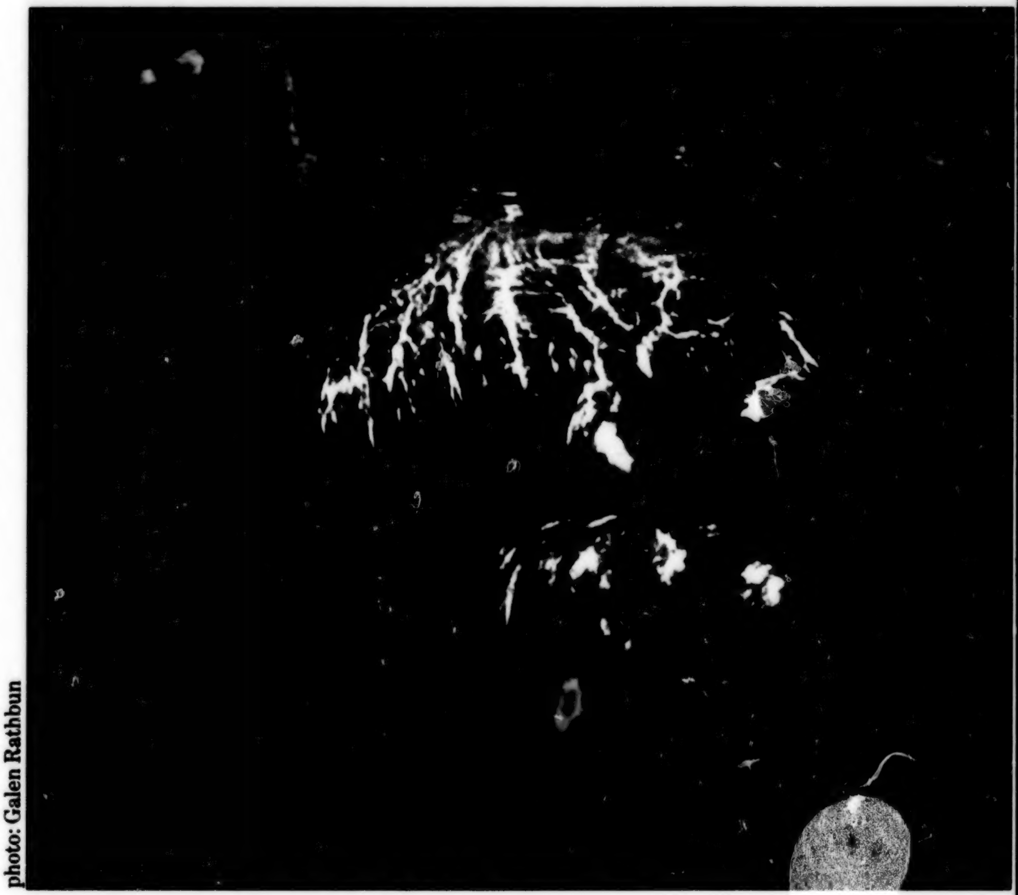

photo: Galen Rathbun

The goals of the National Marine Sanctuary Program are to provide enhanced resource protection through conservation and management of the Sanctuaries that complements existing regulatory authorities; to support, promote, and coordinate scientific research on, and monitoring of, the site-specific marine resources of the Sanctuaries; to enhance public awareness, understanding, appreciation, and wise use of the marine environment; and to facilitate, to the extent compatible with the primary objective of resource protection, multiple uses of the National Marine Sanctuaries.

- There are currently 14 designated National Marine Sanctuaries, among them the Florida Keys, Hawaiian Islands Humpback Whale, Stellwagen Banks, and Monterey Bay National Marine Sanctuaries, which include the habitats of listed species. An additional three are in development.

Increasing State Involvement

Policy on Role of States
In July 1994, the Services issued a joint policy, the Policy Regarding the Role of State Agencies in Endangered Species Act Activities, to clarify the crucial role of State fish and wildlife agencies in activities undertaken by the Services under the ESA. This policy recognizes that States possess broad trustee and police powers over fish, wildlife and plants and their habitats within their borders, as well as scientific data and valuable expertise on the status and distribution of such wildlife. As such, State wildlife agencies are in a unique position to assist in implementing all aspects of the ESA. The policy requires the Services to solicit State agency expertise and participation in the following activities: determining which species should be included on the list of candidate species, conducting population status inventories and geographical distribution surveys, designing and implementing prelisting stabilization actions, responding to listing petitions, preparing proposed and final rules, and designing and implementing recovery plans, habitat conservation plans, and monitoring programs.

Recreational Fisheries Policy
The Services adopted a policy in July 1996 that will address the conservation needs of species listed, or proposed to be listed, while providing for the continuation and enhancement of recreational fisheries. This policy identifies measures both Services will take to ensure consistency in the administration of the ESA between and within the two agencies, promote collaboration with other Federal, State, and Tribal fisheries managers, and improve and increase efforts to inform nonfederal entities of the requirements of the ESA while enhancing recreational fisheries.

Candidate Assessment / The Nature Conservancy Agreement
In an effort to reach out to partners in assessment of species that are candidates for the ESA's protection and to ensure access to the best available scientific and commercial information, the FWS entered into a data sharing agreement with The Nature Conservancy in 1995. This agreement provides the FWS with access to portions of the Natural Heritage Central Database, a database developed by the Conservancy in cooperation with the Network of State Natural Heritage Programs and other cooperators. Natural Heritage Programs operate in all 50 States, 5 Canadian provinces, and 13 Latin American and Caribbean countries. Data made available to FWS include information on the status of native species; information on their ecology and life history; management strategies; and scientific references. Reports of this information have been provided to FWS Regional Offices and the field for use in management decision making.

- In the United States, 84 percent of these programs are housed within State governmental agencies. The data available to the Service through this agreement includes information originally developed at the State level, and provides a scientifically credible source of information on listed, proposed, and candidate species.

Role of States in Candidate Conservation and Species Recovery Activities
The FWS and NMFS have worked increasingly with State and local governments in the development of candidate conservation agreements, Safe Harbor agreements, recovery plans, and Habitat Conservation Plans:

- The Texas Gulf Coast Prairies Safe Harbor program encompasses voluntary initiatives in 19 counties of the Texas coastal prairie zone. Target species are the Attwater's prairie chicken, Houston toad, and the Texas prairie-dawn flower. Beyond these species, at least 24 other listed and/or candidate species could benefit from beneficial management actions fostered by the program. To date, at least 40 landowners managing over 170,000 acres have applied to enter the program.

- In Wisconsin, the Georgia Pacific and Consolidated Paper corporations have been involved in the effort to develop and implement the recovery plan for the Karner blue butterfly. The 17-member recovery team includes at least one representative from each of the six States inhabited by this species.

- The Habitat Conservation Planning Handbook encourages the Services' personnel to suggest to incidental take permit applicants that they should include other Federal and State agencies who can utilize their existing authorities, expertise, or lands, in support of HCP development and implementation. It particularly encourages participation in the HCP development process of other Federal and State agencies that manage nearby lands.

- The State of Oregon has made significant commitments of resources and personnel to restore the health of the Oregon coastal coho salmon runs through a comprehensive program called the Oregon Coastal Salmon Restoration Initiative (the Oregon Plan). The goal of the Oregon Plan is to restore natural coastal salmon populations and fisheries to productive and sustainable levels that will provide substantial environmental, cultural, and economic benefits. Recently, NMFS and the State of Oregon signed a Memorandum of Agreement to establish a collaborative effort and to make needed modifications and adaptive changes to the Oregon Plan as warranted by scientific information and the monitoring of implementation efforts and their effectiveness.

Section 6 Grants to States and HCP Land Acquisition

The Services are authorized under Section 6 of the ESA to enter into cooperative agreements with states for the purpose of assisting in the implementation of state programs for the conservation of federally listed threatened and endangered species. Cooperative agreements (1) provide states with the best means to coordinate conservation activities and share responsibilities with the Services, and (2) provide a mechanism for states to apply for federal funds for state endangered species programs.

photo: USFWS

The FWS works closely with local government and other groups to establish HCPs to protect species and, at the same time, allow economic development activities to continue. These plans often require local conservation land acquisition. The Habitat Conservation Planning Land Acquisition program initiated in FY 1997 addresses the Service's commitment to provide additional resources needed to acquire HCP conservation lands. State and local government land acquisition complements but does not supplant, the private and local government responsibilities that are part of the HCP process. The funds assist in paying for the conservation efforts and have a significant influence on the success of the individual HCPs.

In FY 1997, $6 million was allocated to specific HCPs in California, Utah, Texas, and Florida. In FY 1998, an additional $6 million was allocated to acquire land in California, Utah, Texas, Florida and North Carolina. The acquisitions protected habitat for a myriad of listed species including California gnatcatcher, Coachella Valley fringe-toed lizard, peregrine falcon, desert tortoise, sea turtles, red-cockaded woodpecker, golden-cheeked warbler, and numerous candidate or proposed species.

Addressing Native American Concerns

Policy Initiatives

Long-standing congressional and Administrative policies promote tribal self-government and self-determination, as well as endangered and threatened species conservation. The Departments of Interior and Commerce are working together with Native American tribes to harmonize the Federal trust responsibility to tribes with the implementation of the ESA via a joint Departmental Secretarial Order. The Departments recognize the common Federal and tribal goals of conserving candidate, proposed and listed species. The Departments respect the rights of tribes as governmental sovereigns and recognize the need to maintain effective government-to-government relationships when implementing the ESA. This effort furthers the objectives of: the Presidential memo on government-to-government relations with Native American tribal government (April 29, 1994); Native American Policy of the FWS (June 28, 1994); and the American Indian and Alaska Native Policy of the Department of Commerce (March 30, 1995). The Secretarial Order was signed on June 5, 1997.

Examples of Partnerships with Native Americans

Continued progress has been made in recent years to involve affected tribes in the development of HCPs, recovery plans, and candidate conservation agreements.

- FWS has assisted the Northwest Indian Fisheries Commission in enhancing its capability to critique and participate in the Service's HCP initiative for the Pacific Northwest. FWS is also in partnership with over 20 Tribes, the State of Washington, and NMFS in the "For the Sake of Salmon" effort to assist those species in the Pacific Northwest.

- Addressing Native American Concerns—Designation of critical habitat for the Mexican spotted owl has not been found necessary for lands owned by the White Mountain Apache and San Carlos Apache tribes based on cooperatively-developed timber management plans for their reservations. FWS is working with 12 tribes, including the Southern Utes (CO), Jicarilla Apache (NM), and Mescalero Apache (NM) Tribes to develop fishery management plans for non-native fishes. FWS also signed a Statement of Relationship with the White Mountain Apache tribe on December 6, 1994 which established a ground-breaking government-to-government conservation partnership between the Tribe and the FWS.

- FWS initiated training activities with the Bureau of Indian Affairs and Native tribes on section 7, the Service's Native American policy, and the conservation of candidate species.

- Under a cooperative agreement with FWS, the Nez Perce in Idaho are assisting recovery efforts for wolves and grizzly bears in the Bitterroot Wilderness Area. Moreover, in Montana, the Blackfeet are assisting the FWS in habitat restoration efforts for candidate species (redband and west slope cutthroat trout and the bull trout).

- The Lakota Sioux (SD) requested the re-introduction of black-footed ferrets as part of their prairie management program; FWS is working with them on this project along with the Navajo Nation and the Huvalpai Tribe who are also interested in restoring ferrets to their lands in Arizona.

- FWS is working with the Yupik Eskimos of the Yukon Delta area to minimize subsistence take of spectacled eiders.

- NMFS has developed a Memorandum of Agreement that recognizes that the Federal government's unique relationship and responsibility toward Indian Tribes and includes a provision for meaning ful tribal participation in the planning, conduct and administration of the fish and wildlife conservation activities affected by this agreement.

Increasing the Effectiveness of Recovery Activities

Safe Harbor Agreements - Incentive for Private Landowners to Foster Recovery
As a new incentive for non-Federal landowners to manage their lands for the benefit of listed species, the Services are developing the "Safe Harbor" program to protect landowners from additional ESA restrictions when they voluntarily cooperate with the Services to benefit listed species on their property. Through the Safe Harbor program, the Services provide assurances to landowners that the use of their property will not be subject to additional restrictions under the ESA due to conservation activities which benefit and attract listed species. At the end of a Safe Harbor Agreement, participating landowners would be allowed to return their property to its original baseline conditions. Net conservation benefits for affected species may include a reduction in habitat fragmentation, an increase in population numbers, and provision of areas to field test innovative management techniques.

- The first Safe Harbor agreement was the Sandhills Safe Harbor Agreement in North Carolina, which benefits the red-cockaded woodpecker and covers approximately 5,200 acres of private lands.

  Safe Harbor Agreements have also been developed for: red-cockaded woodpeckers in the pineywoods of Texas, the Hawaiian stilt, the Oregon checkerspot butterfly, and the Attwater's greater prairie chicken (Texas). Additionally, six Safe Harbor Agreements cover activities affecting the aplomado falcon in Texas.

- All States in the range of the red-cockaded woodpecker, from Virginia to Texas, are currently working with the Services to develop statewide Safe Harbor programs.

- While the average Safe Harbor agreement covers about 1,000 acres, they range in size from 2.5 acres to 3,300 acres, making them attractive to both small landowners and corporate interests.

Increased Stakeholder Involvement
In 1994, the FWS and NMFS issued a joint policy (Policy on Recovery Plan Participation and Implementation Under the Endangered Species Act) to minimize the economic and social impacts of the implementation of recovery plans by requiring, among other things, that affected local interests have the opportunity to participate in the recovery planning and implementation process. The Services recognize that the contributions of all affected stakeholders are critical to development of successful recovery efforts. The following examples demonstrate the Administration's commitment to diversifying representation on recovery teams:

- In South Dakota, the threatened Western prairie fringed orchid grows on land that is grazed by cattle and harvested for timber. Cooperation of local ranching and timber interests is critical to successful implementation of the recovery plan for this species. As a result, representatives from both the Sheyenne Valley Grazing Association and the Sheyenne National Grassland (which is managed by the U.S. Forest Service) are participating members of this recovery team.

- In Minnesota, the Northern States Power Company (NSP) owns and operates a hydropower dam immediately upstream from the last known bed of the endangered winged maple leaf mussel. During the winter months, flow through this dam was completely shut off at night to raise reservoir levels in preparation for the high morning demand for hot water, causing the mussel bed downstream to go dry. Upon learning the facts of this situation, NSP voluntarily agreed to raise their minimum water release from zero to 800 cubic feet per second during the winter months. The top aquatic biologist with NSP is now a member of the recovery team for this mussel species.

- In Wisconsin, the Georgia Pacific corporation wrote a letter asking to be included on the recovery team for the endangered Karner blue butterfly. A similar request from a representative of Consolidated Paper was also received. As a result, both major timber interests that operate in the range of this species have been involved from the start in the effort to develop and implement its recovery plan. The 17-member recovery team also includes at least one representative from each of the six states inhabited by this species.

- Some threatened and endangered species, particularly marine species, are highly migratory in nature and routinely cross international borders. Cooperation among nations is often required to recover these species throughout their range. Sea Turtles are such a species. All six species of sea turtles found in U.S. waters are protected under the ESA. These species also occur in the waters of other nations, requiring the U.S. to work in several international forums to protect and conserve them. Since 1968 the United States has worked jointly with Mexico to protect the nesting population of Kemp's Ridley sea turtles. Sea turtles have also been protected from any international trade in their parts or products, such as tortoise shell, under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) since 1976. Most recently, nations in the Western Hemisphere negotiated a convention which will protect sea turtles from incidental capture in shrimp trawling nets, excessive direct harvest, international trade, and which will protect their habitat.

- NMFS has established "take reduction teams" (TRT's) to develop take reduction plans for those fisheries with the greatest impact on marine mammal stocks including species listed under the Endangered Species Act. The TRT's are made up of individuals who represent the span of interests affected by the strategies to reduce takes, including commercial and recreational fishing industries, fishery management councils, interstate commissions, academic and scientific organizations, state officials, environmental groups, Native Alaskans or other Native American interests where appropriate, and NMFS representatives. The Atlantic Large Whale TRT, for example, is focusing on reducing the incidental take of several species of whales including the Right Whale in the South Atlantic shark gillnet fishery, the lobster trap/pot fishery, the mid-Atlantic gillnet fishery, and the Gulf of Maine sink gillnet fishery.

- In 1995 the Services created a Technical Management Team (TMT) to advise the U.S. Army Corps of Engineers (COE) and Bureau of Reclamation on in-season hydropower system operations for the Columbia River, inviting the states and tribes to join the TMT as full participants. The TMT develops a water management plan prior to the salmon migration season that is based on expected run-off conditions and migration characteristics. The team meets weekly during the migration season to develop detailed operational recommendations as the season unfolds. Federal, state and tribal fishery managers have a greater voice than ever before in river operations. There has been a good record of cooperation and accommodation of the needs of stakeholders, and the development of a dispute resolution process is anticipated to further improve this effort.

- In 1995 NMFS created a work group of regional salmon mangers to assist the COE in planning for, and carrying out, physical improvements at dams. This work group is called the System Configuration Team or SCT. This team is currently formulating a long-term work plan which sets forth priorities, budgets and schedules for development, testing and deployment of dam modifications. As with the TMT, state and tribal managers have been asked to participate, and NMFS is attempting to make the decision-making process as accessible and transparent as possible.

Multi-Species Approach to Listing and Recovery Planning

Another of the July 1994 policies, Policy for the Ecosystem Approach to the Endangered Species Act, addresses the need to take a cooperative approach focusing on groups of species dependent on the same ecosystem. It directs the Services to make group listing decisions where possible and to develop and implement recovery plans for multiple listed and candidate species.

The FWS, in cooperation with the NMFS, the Florida Game and Freshwater Fish Commission, state agencies, local governments, and private entities is developing a Multi-species Recovery Plan for the South Florida Ecosystem. This plan will address the recovery needs of the 68 federally-listed threatened and endangered species, 2 candidate species, more than 300 species listed as threatened or endangered by the State of Florida, and other sensitive species, such the numerous migratory birds that depend on the south Florida ecosystem. This recovery strategy is one of the first plans designed to meet the needs of multiple species occupying different types of habitats, as well as approaching recovery by addressing the needs of an entire watershed. The FWS and its partners are developing a plan that uses all of the numerous tools available to restore the listed species, while conserving other species that depend on the same habitat. The agency draft of Volume 1 was published in March 1998 and Volume 2 was published in July 1998.

Controlled Propagation

Controlled propagation of plants and animals is an important tool which can be used to contribute to the recovery of many listed species, and the Services have been developing a policy to address this issue. While controlled propagation may be an important recovery tool for short term needs, it is not a substitute for the recovery of a species in the wild.

- The final policy, to be published within the next few months, describes the appropriate uses of this conservation tool and identifies constraints to its employment in the recovery of listed species. Among criteria for the use of controlled propagation, the policy would require that it be specifically identified in an approved recovery plan and that habitat conservation and restoration be undertaken as a concurrent activity.

- Certain well known species such as California condors and black-footed ferrets have made remarkable comebacks due to captive breeding programs.

Experimental Populations

With continued emphasis on increasing the flexibility in administration of the ESA, experimental populations have become a significant tool used in the recovery of several endangered and threatened species.

- As of January 1998, 12 endangered or threatened species had designated non-essential experimental populations. Proposals are being developed by the Fish and Wildlife Service to designate populations of freshwater mussel species and grizzly bears as non-essential experimental populations.

- Nonessential experimental populations are contributing to the recovery of several well-known species including the black-footed ferret, California condor, California sea otter, whooping crane, and gray wolf populations in Idaho, Montana, and Yellowstone National Park.

END

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